90-268

Supreme Court, U.S.
FILED
JUL 3
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.
OCTOBER TERM 1990

IN RE: THE MARRIAGE OF

JACQUELINE SHEDBALKAR,

Petitioner-Appellee

and

A. RASHIED SHEDBALKAR,

Respondent-Appellant

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED FOR REVIEW

I

Whether an interpretation of a state statute defining "net income" for purposes of assessing child support, imposes a substantial burden on interstate commerce when that statute is interpreted to include as "net income" all of the contributions made by a self-employed individual to his employee's pension and retirement fund.

II

Whether the local benefit of increased child support sustained by characterizing all of the contributions made by a self-employed individual to his employee's pension and retirement fund as "net income" to him, is offset by the needs of employees to have the opportunity to provide for their retirement and old-age.

III

Whether the local interest in interpreting state child support laws in such a manner as to obviate federal tax benefits for employees pension fund contributions outweighs the federal, national interest to provide incentives by federal tax benefits for the establishment of employees retirement and pension funds.

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(1983) 96 Ill. 2d 114, 449 NE2d 137

In Re: Marriage of Piccione
(1987) 158 Ill. App. 3d. 955, 511 NE2d 1157

GROUNDS FOR JURISDICTION

The decree sought to be reviewed was entered January 4, 1988, in the Circuit Court of Cook County, Illinois; discretionary review of that decree by the Illinois State Supreme Court was denied on April 4, 1990.

No order respecting a rehearing was ever entered.

Jurisdiction is conferred upon this Court by 28 USCS 1257(3) to review the decree of January 4, 1988.

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

U.S. CONSTITUTION

Article I, Section 8, Clause 3, Power of Congress to Regulate Commerce.

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

FEDERAL STATUTES

26 USCS 401, IRC (1950) § 401
26 USCS 404(a)(8), IRC. (1950) § 404(a)(8)
29 USCS 1001(b)

STATE STATUTES

Ill.Rev.Stat. 1987, Chp. 40, § 505

505. **Child Support-Contempt-Penalties**

§505. Child Support; Contempt; Penalties. (a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, a proceeding for child support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or any proceeding authorized under Section 601 of this Act, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for his support, without regard to marital misconduct.

(1) The Court shall determine the minimum amount of support by using the following guidelines:

Number of Child	Percent of Supporting Party's Net Income
1	20%
2	25%
3	32%
4	40%
5	45%
6 or more	50%

(2) The above guidelines shall be applied in each case unless the court, after considering evidence presented on all relevant factors, finds a reason for deviating from the guidelines. Relevant factors may include but are not limited to:

(a) the financial resources of the child;

(b) the financial resources and needs of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child, and his educational needs; and

(e) the financial resources and needs of the non-custodial parent.

If the court orders a lower award, based on consideration of the factors in paragraphs (2)(a) through (2)(e) of subsection (a) of this Section, it shall make express findings as to its reason for doing so. The guidelines may be exceeded by the court without express findings, minus the following deductions:

(3) "Net income" is defined as the total of all income from all sources, minus the following deductions:

(a) Federal income tax (properly calculated withholding or estimated payments);

(b) State income tax (properly calculated withholding or estimated payments);

(c) Social Security (FICA payments);

(d) Mandatory retirement contributions required by law or as a condition of employment;

(e) Union dues;

(f) Dependent and individual health/hospitalization insurance premiums;

(g) Prior obligations of support or maintenance actually paid pursuant to a court order;

(h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period.

(4) In cases where health/hospitalization insurance coverage is not being furnished to a child to be covered by the support order, the court may order the party from whom support is sought to provide such coverage when a child can be added to an existing insurance policy at reasonable cost. Net income shall be reduced by the cost thereof in determining the minimum amount of support to be ordered.

(5) If the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case. The final order in all cases shall state the support level in dollar amounts.

(6) If there is no net income, due to unemployment of the parent, and the child is receiving support services under Article X of The Illinois Public Aid Code, as amended, the court may order the parent to report to the Illinois Department of Public Aid for participation in job search, training or work programs established under Section 9-6 of such Code:

(b) Failure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt. In addition to other penalties provided by law the Court may, after finding the parent guilty of contempt, order that the parent be:

(1) placed on probation with such conditions of probation

as the Court deems advisable

(2) sentenced to periodic imprisonment for a period not to exceed 5 months; provided, however, that the Court may permit the parent to be released for period of time during the day or night to:

(a) work; or

(b) conduct a business or other self-employed occupation.

The Court may further order any part or all of the earnings of a parent during a sentence of periodic imprisonment paid to the Clerk of the Circuit Court or to the parent having custody or to the guardian having custody of the minor children of the sentenced parent for the support of said minor children until further order of the Court.

(c) Any new or existing support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder, each such judgment to be in the amount of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced.

(d) A one-time charge of 20% is imposable upon the amount of past-due child support owed on July 1, 1988 which has accrued under a support order entered by the court. The charge shall be imposed in accordance with the provisions of Section 10-21 of the Illinois Public Aid Code and shall be enforced by the court upon petition.

Amended by P.A. 85-2, §2, eff. May 1, 1987; P.A. 85-114, Art, II, §2, eff. July 23, 1987.

STATEMENT OF THE CASE

A. RASHIED SHEDBALKAR is a self-employed individual who maintains a pension and profit sharing plan for the benefit of himself and his employees. His pension and profit sharing plan is a qualified plan under the I.R.C. §401, 26 USCS 401, and the Federal Employees Retirement Income Security Act, 29 USCS, 1001, *et seq.* This pension and profit

sharing plan was established by A. RASHIED SHEDBALKAR on September 30, 1980.

Although, A. RASHIED SHEDBALKAR and JACQUELINE SHEDBALKAR were divorced by decree of the Circuit Court of Cook County, Illinois, on January 7, 1980, on September 5, 1985, JACQUELINE SHEDBALKAR filed a petition to modify the decree of divorce for, among other things, an increase in child support.

After a hearing, an order was entered September 14, 1987, granting an increase in child support to JACQUELINE SHEDBALKAR. Then, on January 4, 1988, pursuant to a motion to reconsider filed by JACQUELINE SHEDBALKAR, the order of September 14, 1987 was vacated and a different order increasing the child support was entered. This order of January 4, 1988, provided that contributions made by A. RASHIED SHEDBALKAR to his employees pension and retirement fund were to be included in his net pay for purposes of computing child support and that any federal income tax deduction for those contributions were disallowed for computation of net income for child support. On January 26, 1988, the order of January 4, 1988 was made final and complete.

The federal questions sought to be reviewed were first raised in the Illinois Appellate Court on appeal from the order of January 4, 1988, in the Appellant's brief on appeal.

The Illinois Appellate Court declined to review those issues, raising instead the question of whether the order of January 4, 1988 was a final appealable order under Illinois law (Appendix, Illinois Appellate Court Opinion, page 3 through page 6).

On petition to appeal to the Illinois Supreme Court, that issue of appellate jurisdiction was raised as error to the Illinois Appellate Court. The Illinois Supreme Court declined review.

ARGUMENT

In the Findings and Declaration of Policy Section of the Federal Employees Retirement Income Security Act ("ERISA") 29 USCS 1001(b), the Congress specifically finds

that single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest. The United States Constitution, Article I, §8, Clause 3, vests the sole power to regulate commerce among the states in the Congress. The protection against burdens upon interstate commerce is practical and substantial and extends to whatever is necessary to complete enjoyment of the right protected. *Ozark Pipeline Corp. v. Monier* (1925) 266 US 555, 69 L. Ed. 439. *Maine v. Taylor* (1986) 477 U.S. 131, 91 L.Ed., 2d. 110.

In this case, the Circuit Court interpreted the Illinois Statute defining "net income" for purposes of child support, Ill. Rev. Stat. 1987, Chp. 40, §505, as including payments made by a self-employed individual to his qualified employees pension and retirement plan. By interpreting the statute in that manner, a clear burden is placed upon all single-employer benefit pension plans within the State of Illinois. First, no tax benefit inures to the self-employed individual as is allowed presently by the Internal Revenue Code, §401, 404(a)(8), allowing a deduction against income for contributions to the retirement plan. This means there is no tax incentive in Illinois to establish an employees retirement plan. Second, the self-employed individual, having paid a contribution to his employee's retirement fund, no longer has possession or control of the funds to pay increased child support. The issue becomes not how earnings are characterized, but whether earnings are even available, for payment of child support. Third, there is no practical incentive to establish an employees retirement fund by a self-employed individual as any contributions to that fund would be declared a putative "net income" entirely divorced from the reality of the individual's precise net earnings.

The local benefit which inures to the residents of Illinois is an increase in the available earnings or "net earnings" for child support and presumptively, increased child support payments as well. However, the local benefits are far less than the local and national benefit of allowing employees working for the self-employed individual the possibility to obtain benefits for their old age and retirement security. *Bendix*

Autolite Corp. v. Midwesco Enterprises (1988, US) 100 L.Ed. 2d. 896, 108 S.Ct. 2218. *Brown-Forman Corp. v. Tennessee alcoholic Beverage Com.* (CA.6, 1988) 860 F.2nd. 1354.

Respectfully submitted,

/s/_____

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APPENDIX

The Circuit Court Decree of January 4, 1988
The Opinion of the Illinois Appellate Court
Text, 26 USCS 404(a), IRC (1950) §404(a)
Text, 29 USCS 1001 (b)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

IN RE: THE MARRIAGE OF JACQUELINE SHEDBALKAR, Petitioner and A. RASHIED SHEDBALKAR, Respondent. No. 78D 5863

ORDER

This cause coming on to be heard upon the agreement of the parties and the Court to allow the Court to reconsider its decision as to the petition for reconsideration filed by the petitioner, JACQUELINE SHEDBALKAR, and the Court being duly advised in the premises:

The Court Finds:

1. That it has committed error in the following respects regarding petitions pending support petitions:

A. That the petitioner was entitled to recover retroactive child support relief as of September 11, 1985 and the respondent's written motion to strike petitioner's motion for

support should have been denied.

B. That the Court should have considered respondent's voluntary pension contributions as part of respondent's gross income.

C. That the Court need not consider respondents other benefits such as rental income or payment and insurance payments by his business as part of his gross income.

2. That the Court is not bound by the guidelines pursuant to Chapter 40, Section 505 of the Illinois Marriage and Dissolution of Marriage Act since this matter is a post-decree proceeding.

3. That the Court has determined the respondent's net income per month for the following periods is:

A. 1985: $7,400

B. 1986: 6,353

C. 1987: 5,904

4. That the Court has approximated the respondent's obligation of college support to be $750 per month.

5. That the respondent should have paid to petitioner as and for retroactive child support the following sums for the following periods:

A. September 11, 1985-August 1, 1986 — $1,700/month

B. August 1, 1986-December 31, 1986 — 1,550/month

C. January 1, 1987-August 20, 1987 — 1,300/month

6. That from August 20, 1987, the respondent shall pay to the petitioner as and for child support 20% of his net monthly income for 1 child or 25% of his net income monthly for 2 children.

7. That the respondent shall receive credit toward the amount of retroactive support he is obligated to pay to the amount of support he paid for the period of September 11, 1985 to date.

8. That the Court erred in making the preceding order of this Court final and appealable.

9. That pursuant to the _____ that the respondent has paid petitioner the sum of _____ from the period of September, 1985-December, 1987 as for child support obligation. That respondent shall receive credit for payments made.

IT IS ORDERED:

1. That the respondent shall pay to the petitioner the sum of $1,313 per month as and for the support of the parties' children. That said amount equals 25% of respondent's net monthly income minus $750 per month toward the college educational expenses of David. That said payments shall begin as of January 1st 1988 and be paid on the _____ day of each month thereafter.

January 4, 1988

Enter: _____

Judge

No. 1-88-0476

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF JACQUELINE SHEDBALKAR, Petitioner-Appellee, and A. RASHIED SHEDBALKAR, Respondent-Appellant.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY. No. 78 D 5863

HONORABLE JOHN BEATTY, JUDGE PRESIDING.

ORDER

This appeal is predicated on two separate notices of appeal filed by respondent, A. Rashied Shedbalkar, from orders entered in a post-dissolution proceeding. The first notice of appeal, filed February 23, 1988, appealed from an order dated January 26, 1988, which increased Rashied's child support payments and granted retroactive child support relief to petitioner, Jacqueline Shedbalkar, n/k/a Jacqueline Gore. The second notice of appeal, filed April 7, 1988, appealed from an order dated March 14, 1988, which required Rashied to pay Jacqueline's attorney fees.

The record indicates that in January 1980, a judgment for the dissolution of Rashied's and Jacqueline's marriage was entered. At that time, Jacqueline was awarded, *inter alia*, unallocated maintenance and child support for herself and the four minor children for a ten-year period or until she remarried.

In September 1985, Jacqueline filed a *pro se* petition to

modify the judgment and to enforce the judgment. The *pro se* petition alleged changed financial conditions of the parties $1,313 per month for two minor children (25 percent of net income minus $750 per month for David's college expenses). Following a hearing on the credits due Rashied, the final child support order was entered on January 26, 1988. On February 23, 1988, Rashied filed his notice of appeal from this order.

Meanwhile, on October 2, 1987, Jacqueline's attorney had filed a petition for allocation of attorney fees. The record indicates that, at the time of the fee hearing, Rashied was a plastic surgeon with a net income of $89,448 (1985); $66,621 (1986) and $70,369 (1987). Jacqueline had remarried, was a homemaker and had been unemployed since August 19885. In addition, Jacqueline was in poor health, suffering from Crohn's disease and two or three permeated disks, and had had to seek medical assistance from public aid. Following a hearing on the fee petition, the trial court entered its order on March 14, 1988, ordering Rashied to pay Jacqueline's attorney fees of $9,180 plus costs of $686.03. Rashied filed his notice of appeal from the fee order of April 7, 1988.

Initially, Jacqueline argues that Rashied's notice of appeal from the child support order should be dismissed on the grounds that, at the time of the filing of the notice of appeal, no order had been entered disposing of the allocation of attorney fees. Jacqueline contends that, in the absence of a final order disposing of the attorney fee issue, Rashied's first notice of appeal is premature and ineffective to vest this court with jurisdiction to review the child support order. Rashied has failed to file a reply brief offering any response to this argument.

It is well-established that issues raised in a dissolution of marriage proceeding are not separate claims and, therefore, are not individually appealable under Supreme Court Rule 304(a). (*In re Marriage of Leopando* (1983), 96 Ill.2d 114, 449 N.E.2d 137.) In reliance on *Leopando*, the court in *In re Marriage of Derning* (1983), 117 Ill.App.3d 620, 453 N.E.2d 90 specifically held that the issue of attorney fees is directly related to a dissolution of marriage claim and is not an

ancillary claim. Accordingly, the issue of fees must be resolved before an appeal is taken from the judgment of dissolution.

Similarly, in *In re Marriage of Piccione* (1987), 158 Ill.App.3d 955, 511 N.E.2d 1157, the same direct relationship was found between the issues of child support and attorney fees in a post-judgment proceeding. In *Piccione*, the trial court entered an order granting petitioner an increase in support on June 10, 1986, and, on the same date, granted petitioner leave to file a petition for fees. Subsequently, on July 23, 1986, petitioner's motion for reconsideration was denied. On August 18, 1986, petitioner filed a notice of appeal from the child support order and from the order denying reconsideration. Thereafter, on September 16, 1986, the trial court entered its order on attorney fees, from which petitioner appealed on October 10, 1986. Both appeals were consolidated.

In concluding that it lacked jurisdiction to review the appeal from the child support orders, the *Piccione* court stated:

> "Since attorney fees are dependent upon and integrally related to decisions regarding the financial resources of each of the parties, a disposition off their allocation should be made before the reviewing court can properly assess the trial court's decision regarding the child-support orders." 158 Ill.App.3d 955, 963.

In the present case, Rashied's notice of appeal from the child support order was filed on February 23, 1988, while Jacqueline's petition for attorney fees was still pending. On March 14, 1988, the order assessing attorney fees against Rashied was entered, from which he appealed on April 7, 1988. The notices of appeal were subsequently consolidated. Pursuant to *Leopando* and its progeny, we find that Rashied's notice of appeal from the child support order, file prior to the entry of an order deciding allocation of attorney fees, was premature and that this court lacks jurisdiction to review the child support order. Accordingly, we dismiss that part of Rashied's appeal which is from the child support order. This determination obviates the need to discuss Rashied's conten-

tion that for purposes of child support, "net income" does not include self-employed parent's contributions, as an employer, to a retirement pension plan.

Regarding the assessment of attorney fees, Rashied contends that the trial court erred in ordering him to pay Jacqueline's attorney fees because there was no evidence that Jacqueline lacked the ability to pay. Further, Rashied contends that the trial court erred in granting Jacqueline's attorney the full amount requested for attorney fees on the grounds that the petition for fees disclosed work not performed and work that could not be explained as reasonable or as necessary.

The allowance of attorney fees is governed by section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) (Ill.Rev.Stat. 1987, ch. 40, par. 508(a)), which states that "after considering the financial resources of the parties, [the trial court] may order either spouse to pay a reasonable amount for his [or her] own costs and attorney's fees and for the costs and attorney's fees necessarily incurred or, for the purpose of enabling a party lacking sufficient financial resources to obtain or retain legal representation, expected to be incurred by the other spouse." The propriety of an allowance of fees depends upon a showing by the party seeking them of the inability to pay and a corresponding demonstration of the ability of the other spouse to do so. (*In re Marriage of Drummond* (1987), 156 Ill.App.3d 672, 509 N.E.2d 707.) Merely showing that the other spouse has a greater ability to pay attorney fees is not sufficient. Moreover, it is not necessary that the party seeking fees liquidate his or her assets or that he or she be destitute before there can be a finding of inability to pay. Financial inability exists where the party seeking fees shows that payment would strip that person of his or her means of support and undermine his or her economic ability. (*In re Marriage of Piccione* (1987), 158 Ill.App.3d 955, 511 N.E.2d 1157.) Decisions regarding the propriety of allowing attorney fees and the appropriate amount of those fees are matters within the sound discretion of the trial court and will not be disturbed on review absent a clear showing that such discretion was abused. (*In re*

Marriage of Skahn (1986), 158 Ill.App.3d 764, 501 N.E.2d 229.) An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Piccione* (1987), 158 Ill.App.3d 955, 511 N.E.2d 1157.

Initially, Rashied contends that the court was not aware of any testimony concerning Jacqueline's inability to pay. The record contradicts this contention. At the hearing on attorney fees, the following colloquy took place between the trial court and Jacqueline's attorney:

"THE COURT: Have we had a hearing on the financial resources of the parties?

MR. COHEN: You had substantial testimony.

THE COURT: Was it the testimony of your client that she was not employed and has no income?

MR. COHEN: At that time it was.

THE COURT: At that time?

MR. COHEN: Right.

THE COURT: And at that time was when?

MR. COHEN: Through October of 19, I believe, '87.

THE COURT: Okay."

Rashied's attorney raised no objection to the lack of any additional testimony at the fee hearing regarding the parties' ability or inability to pay. Therefore, absent objection raised in the trial court below, Rashied has waived this issue for review. This principle is particularly applicable where additional testimony could have been given at the fee hearing to overcome this argument on appeal. *McKanna v. Duo-Fast Corp.* (1987), 161 Ill.App.3d 518, 515 N.E.2d 157.

Moreover, even if Rashied had not waived this issue, the record indicates that there was extensive testimony as to the parties' ability and inability to pay at the child support hearing. Thus, contrary to Rashied's contention, we find that the trial court was well-acquainted with the financial position of each party. See *In re Marriage of Armstrong* (1982), 107 Ill.App.3d 217, 437 N.E.2d 761.

Rashied further asserts that the amount of fees awarded was excessive because the petition for fees disclosed services not performed, services performed on behalf of the parties'

children who were represented by separate counsel, and for services for mundane matters that were charged at the higher court-time rate. In awarding fees, courts consider a variety of factors, including: the skill and expertise of the attorneys; the financial positions of the parties; the nature of the controversy; the novelty or difficulty of the questions raised; the importance of the question from a family law viewpoint; the degree of responsibility involved from the management perspective; the time and labor involved; the usual and customary charge for the same or similar services; and the benefit or result provided. (*In re Marriage of Dulyn* (1980), 89 Ill.App.3d 304, 411 N.E.2d 988.) In every case, the fees allowed should provide for fair compensation for those services which were both reasonable and necessary. (*Donnelley v. Donnelley* (1980), 80 Ill.App.3d 597, 400 N.E.2d 56.) In presenting evidence as to the reasonableness of fees, more must be shown to justify an award than a compilation of hours and an hourly rate. (*In re Marriage of Brophy.*) An award of fees will not be reduced absent an abuse of discretion, which can be shown by an award of unreasonably high fees. *In re Marriage of Dulyn.*

In the present case, Rashied contends that the trial court erroneously granted attorney fees "in the sum of $9,652.50, the full amount requested." Rashied's contention is based on an erroneous premise. The sum of $9,652.50 for attorney fees referred to by Rashied is not the sum awarded in the court's order of March 14, 1988. The sum awarded was $9,180 for fees, plus costs. Jacqueline's attorney had requested fees of $962.50, based on 71.5 hours at $135 per hour. However, the trial court awarded fees for only 68 hours of work at $135 per hour.

Although the difference of 3.5 hours of work is minimal, the fact that the court deducted those hours disputes Rashied's contention that Jacqueline's attorney had been awarded fees for a 2.5 hour conference he could not explain at the hearing. Although the court did not specifically refer to that conference in reducing the requested fees, in light of the fact that that conference was the only time sheet entry Jacqueline's attorney could not explain at the fee hearing, it is reasonable

to conclude that the reduction refers to that entry.

Rashied further argues that Jacqueline's attorney submitted charges for services rendered on behalf of the parties' children, Yasmine and David, both of whom had been represented by separate counsel. At the hearing, Jacqueline's attorney explained that those time sheet entries which referred to Yasmine and David did not refer to work done on the children's behalf. Rather, they referred to work done on Jacqueline's behalf regarding custody and college expenses Rashied was obligated to pay. Thus, Rashied's contention is unfounded. See *In re Marriage of Brophy*.

Finally, Rashied argues that the fee petition erroneously charged a flat rate for court time and mundane office tasks. In response, Jacqueline's attorney argues that although courts have held that it is preferable to charge a higher rate for court time than for general office tasks, courts have never held that such a billing system is mandatory. We agree and find no evidence that the trial court abused its discretion.

For the reasons stated above, we dismiss that part of Rashied's appeal which is from the child support order and affirm the trial court's judgment as to assessment of attorney fees.

Dismissed in part; affirmed in part.

CAMPBELL, J., with BUCKLEY and O'CONNOR, JR., JJ., concurring.

Sec. 404. Deduction for contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan.

(a) General rule.

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible under this chapter, they shall be deductible under this section, subject, however, to the following limitations as to the

amounts deductible in any year:

(1) Pension trusts.

(A) In general. In the taxable year when paid, if the contributions are paid to a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or which such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years.

(iii) an amount equal to the normal cost of the plan, as determined under regulations by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

§ 1001b. Findings and declaration of policy

(a) Findings. The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) Additional findings. The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans—

(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

(2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship;

(3) is necessary to maintain the premium costs of such system at a reasonable level; and

(4) is necessary to finance properly current finding deficiencies and future obligations of the single-employer plan termination insurance system.

(c) Declaration of policy. It is hereby declared to be the policy of this title—

(1) to foster and facilitate interstate commerce;

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans;

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits;

(4) to provide for the transfer of unfunded pension

liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship;
(5) to maintain the premium costs of such system at a reasonable level; and
(6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

(Apr. 7, 1986, P.L. 99-272, Title XI, § 11002, 100 Stat. 237.)

69789

ILLINOIS SUPREME COURT
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April 4, 1990

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No. 69789 - Jacquelyn Shedbalker, respondents, v. A. Rashied Shedbalker, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 26, 1990.